



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Inlinqua Schools of Languages

File: B-229784

Date: April 5, 1988

DIGEST

1. Where technical evaluation scheme in a request for proposals contained performance under previous contracts as an evaluation factor and required offerors to submit at least two references from prior contracts, agency's technical evaluation of protester's prior performance was unreasonable where agency ignored the protester's listed prior performance, as the incumbent, for the same services with the procuring agency.

2. Protester's proposal was unreasonably downgraded for technical merit based on the results of a survey of references for prior contract performance, where technical evaluators noted on the scoring sheets that certain questions were "not applicable" and recorded no points for those survey questions. Since points for each of the questions were added together, rather than averaged, yielding a total cumulative point score, the "not applicable" notations did not have the intended neutral effect but rather resulted in lowering the protester's point score.

DECISION

Inlinqua Schools of Languages (Inlinqua) protests the award of a contract to Language Learning Enterprises (LLE), under request for proposals (RFP) No. FAS-87-2, issued by the Foreign Agricultural Service, Department of Agriculture. The RFP was for individual and group instruction in foreign languages on a requirements basis for a period of 1 base year through September 1988 plus 1 option year.^{1/} Inlinqua

^{1/} Although the RFP contained an option clause which allowed for renewal up to the maximum of 5 years, the contract as awarded was only for the base year and 1 option year since proposals were evaluated on that basis.

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contends that the Foreign Agricultural Service's evaluation of its technical proposal was unreasonable.

We sustain the protest.

The RFP provided that award would be made to the offeror whose proposal was most advantageous to the government, price and other factors considered. For award purposes, the solicitation listed the following evaluation criteria, with the corresponding point scores based on a 100-point scale:

- 1) Technical merit (60 points)
 - a) Performance under previous contracts (25 points)
 - b) Experience of proposed personnel based on resumes of proposed personnel (35 points)
- 2) Overall cost (40 points)

For technical evaluation purposes, the RFP required offerors to provide the resumes of all persons who would serve as instructors and to submit the names of at least two organizations for which the offeror had performed work.

As indicated above, technical points were divided between performance under previous contracts (25 points) and experience of proposed personnel (35 points) for a total possible technical score of 60. Point scores for past performance were assigned based upon the results of a questionnaire administered in a telephone survey of two of the references listed in each proposal. The survey consisted of five questions worth five points each, for a maximum possible score of 25. The scores assigned by the two references were averaged together for one raw score for prior performance. Scores were assigned for experience of proposed personnel based on an evaluation of the resumes by each member of the technical evaluation panel using a uniform checklist. All the scores assigned by each technical evaluator for proposed personnel were averaged together for one raw score for proposed personnel. These raw scores for technical merit were then converted using a mathematical formula yielding the maximum of 60 points for the highest of the raw scores. Similarly, scores for overall cost were assigned based on a mathematical formula using the lowest proposed cost as a base yielding the maximum points of 40 for the proposal offering the lowest overall cost.

Three firms submitted proposals. Evaluation of proposals yielded the following adjusted scores:

	LLE	International Center for Language Studies	Inlingua
Technical	60	49	45
<u>Cost</u>	<u>39</u>	<u>37</u>	<u>40</u>
Total	99	86	85

Inlingua, as the offeror offering the lowest cost, received the maximum of 40 points for cost, while LLE, as the offeror rated the highest technically, received the maximum of 60 points for technical merit. Since LLE's cost was not significantly more than Inlingua's, the agency's source selection official decided, based on the above point scores, to award the contract to LLE. Award was made to LLE on September 29.

Inlingua, as the incumbent contractor for the past 3 years, filed a protest with the contracting agency on October 7 complaining that its proposal was unreasonably downgraded because of the improper use of references who provided unsatisfactory ratings as to Inlingua's past performance. Inlingua also complained that prior to award, but after the closing date for receipt of proposals, it had "suddenly received an urgent request from the Small Business Administration" asking Inlingua to justify its small business status. 2/ The agency denied Inlingua's agency-level protest by letter dated December 4. Inlingua filed its protest in our Office on December 10. Performance has not been suspended pending resolution of this protest since Inlingua's protest was not filed with our Office within the period necessary to trigger the suspension provisions of the Competition in Contracting Act of 1984.

Inlingua argues that although it listed five references in its proposal only two were contacted for use in rating its past performance, and neither of those involved Inlingua's

2/ On the assumption that the size status protest had been filed by a competitor, Inlingua inferred that procurement information had been prematurely disclosed by the agency. Its understanding was incorrect. Based on a brochure, provided by Inlingua, which detailed the company's ability to provide language training in various countries, the contracting officer had asked the SBA, pursuant to FAR § 19.301(b), (c) (FAC 84-31), to make a determination as to Inlingua's size status. Inlingua was found to be a small business concern for purposes of the procurement.

3 years of performance as the incumbent with the very agency conducting this procurement. Inlingua also complains that its proposal was improperly downgraded because one of the two references called by the Foreign Agricultural Service could not provide a rating for two of the five questions asked in the survey because the reference indicated that the questions did not apply to Inlingua's contract with that agency. Inlingua further argues that asking contract administrators, as references, to rate technical merit produced unreliable data since their "responsibilities limit their knowledge of the performance refinements of any single contract" and that the questions used in the survey of references should not have been of equal weight since some were more significant, in its view, than others in evaluating technical capability.

Inlingua's last two arguments either are untimely or without merit. As for Inlingua's contention that contract administrators should not have been used as references, the RFP clearly indicated that offerors were required to submit the names of prior contract administrators as references, and Inlingua provided in its proposal, without objection, the names of five contract administrators as references. Inlingua's objection to the use of contract administrators as references, raised for the first time in the protester's comments on the bid protest conference, is untimely since it relates to an alleged impropriety which was apparent on the face of the RFP and which therefore should have been filed prior to the closing date for receipt of proposals. See Datagate, Incorporated, B-225377, Nov. 17, 1986, 86-2 CPD ¶ 573.

With respect to the protester's argument that the survey questions should not have been weighted equally, we have stated that an agency need not specifically identify various aspects of stated evaluation criteria if such aspects are reasonably related to the stated criteria. All of the questions asked in the survey related to the prior performance criteria listed in the RFP evaluation scheme and any weighing of those questions was, thus, within the discretion of the Foreign Agricultural Service. See, e.g., Quanta Systems Corporation, B-218974, Sept. 20, 1985, 85-2 CPD ¶ 312.

We do find merit, however, to Inlingua's other objections to the agency's evaluation of its past performance. The agency states that it felt an unfair advantage would have been accorded Inlingua had it used its own evaluators as references. The agency argues that although Inlingua had successfully performed the previous contract, the contracting officer could not consider that in evaluating Inlingua's

past performance and awarding a new contract for the identical services.

We do not agree. We have held that an agency may properly use the opinions of its own evaluators, as any other references, to aid in the evaluation of proposals. See Western Medical Personnel, Inc., B-227991, Sept. 28, 1987, 67 Comp. Gen. ___, 87-2 CPD ¶ 310. Here, the solicitation required that "at least" two references be provided by offerors for use in evaluating prior experience. Inlingua provided five references from prior contracts in its proposal, including a member of the agency's technical evaluation team. The agency selected at random only two of the references to use for evaluation purposes, and did not consider Inlingua's experience as the incumbent. Inlingua's prior contract performance for the Foreign Agricultural Service was the most relevant of Inlingua's references since the current solicitation was for the same services performed under the prior contract. To ignore this experience was improper when the RFP's evaluation scheme contained "references" as an evaluation factor and the incumbent listed the procuring agency as a reference. We have long recognized that incumbent contractors with good performance records can offer real advantages to the government, and that those advantages are often taken into account in proposal evaluation. See Dalfi, Inc., B-224248, Jan. 7, 1987, 87-1 CPD ¶ 24. An agency is not required to equalize competition with respect to these advantages so long as these advantages do not result from a preference or unfair action by the government. See University Research Corporation, B-228895, Dec. 29, 1987, 87-2 CPD ¶ 636.

We also find that Inlingua's proposal was improperly downgraded based on the results of the survey of the two references. Out of the 25 points possible, Inlingua received 11 points from one reference and 13 points from the other. The two references' scores were averaged together for a raw score of 12 for past performance, out of the possible 25. However, the one reference who assigned only 11 points indicated that she could not provide a rating for two of the five questions since Inlingua's contract with that agency did not involve tasks pertaining to those questions. The technical evaluators noted on the scoring sheets that these questions, which carried a maximum of 5 points each, were "n/a"--not applicable--and no points were recorded for the questions. Rather than having the intended neutral effect on the score for prior performance, however, the "n/a" notations caused Inlingua's proposal to be downgraded since points for each of the five questions asked in the survey were added together, rather than averaged, to yield a total cumulative point score for each reference. Out of the 25 points possible from this reference, Inlingua

thus lost a maximum of 10 points on its score solely because that reference could not answer two of the questions.^{3/}

In this respect, Inlingua was downgraded as to past performance not because its performance had been deficient but simply because under one prior contract Inlingua had not been required to perform the tasks pertaining to the evaluators' questions. The evaluators did not investigate any other references provided, including the contracting agency's own experience with Inlingua, even though it was apparent that points were being deducted not for unsatisfactory prior performance but because not all the evaluators' questions were relevant to the contracts picked at random from among Inlingua's references.

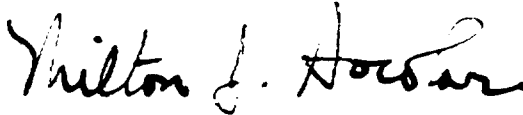
Even though the RFP contained a formula for point scoring proposals, it did not provide for award on the basis of highest total point score. The RFP did state, however, that award would be made to the offeror whose offer was most advantageous to the government, price and other factors considered. Accordingly, the point scores were mere guides for decision making by the source selection official, who had the discretion to determine whether the technical advantage associated with a higher rated proposal was worth the extra cost associated with that proposal. See ICOS Corporation of America, B-225392, Feb. 10, 1987, 66 Comp. Gen. ___, 87-1 CPD ¶ 146. Also, even in an evaluation scheme, where, as here, cost is of less importance than other evaluation criteria, cost may become the determinative consideration in making the award where the proposals are essentially equal technically. See Cobro Corporation, B-228410, Dec. 16, 1987, 87-2 CPD ¶ 600.

Inlingua's position, as the offeror with the lowest cost, was prejudiced by the Foreign Agricultural Service's improper evaluation of the past performance aspect of its technical proposal in that the agency completely ignored Inlingua's most relevant reference of past performance--its performance for 3 years as the incumbent--and deducted 10 points from its score for past performance because one of the references the agency did contact could not provide a rating since that particular prior contract did not require tasks pertaining to the evaluators' questions. If the full 25 points are accorded Inlingua for prior performance, its overall adjusted score for technical merit increases to within approximately 3 points of LLE's score of 60. This

^{3/} A similar problem also occurred in the survey of references for LLE, the awardee, and for International Center for Language Studies, the other offeror.

small difference in technical merit could have made cost the determinative factor in making the award, in which case, Inlinqua's proposal may have been the one most advantageous to the government since it offered the lowest cost. We find, therefore, that the Foreign Agricultural Service's source selection official did not have an adequate basis upon which to exercise her discretion in determining that LLE's proposal was the most advantageous to the government. The protest is, thus, sustained.

Since contract performance for the base period is almost half completed, we do not recommend disturbance of the award. We do, however, find that Inlinqua is entitled to its proposal preparation costs and to the costs of filing and pursuing its protest, including attorney's fees. 4 C.F.R. § 21.6(d) (1987). In addition, we are recommending to the Secretary of Agriculture that the agency refrain from exercising the option under the contract and that appropriate action be taken to insure that the deficiencies noted in this procurement do not recur.



Acting Comptroller General
of the United States